

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Special Customs Reference Application No. 644 of 2020 along with
C.P No. D- 3061 of 2022

Date Order with signature of Judge

Hearing of case

1. For Order as to non-prosecution as objection Nos. 19 & 29 not complied.
2. For Regular Hearing.

26.02.2024.

Mr. Shahid Ali Qureshi, Advocate for Applicant.
Mr. Nehal Khan Lashari, Advocate for Respondents.

Through listed Reference Application the Applicant has impugned Order-in-Appeal No. H-1006 of 2020 dated 11.08.2020 passed by the Customs Appellate Tribunal, Karachi (Camp at Islamabad) in Customs Appeal No.K-H-1006/2020, proposing various questions of law; however, at the very outset after briefly hearing the learned Counsel and after going through the record we have noticed that the respondents in whose favour, the Tribunal has passed the impugned order had never appeared before the adjudicating authority as reflected from the Order-in-Original No. 12 of 2020 dated 20.07.2020, whereas, the Tribunal has considered the contention of the Respondent including documents which were never presented before the original authority and based on that has overturned a finding of fact recorded at the original stage including the fact that the vehicle in question had some hidden cavities for carrying the smuggled oil in question; hence, was liable for outright confiscation in terms of SRO 499(I)/2009 and could not have been released against any redemption fine.

While confronted it is contended by the Counsel for Respondent that no show cause notice was ever issued to the present Respondent, therefore, he could not appear before the Adjudicating Authority; however, if that be the case, then the Tribunal ought to have remanded the matter to the original

authority for examining the contention of the respondents, as the order-in-original was an ex-parte order. Counsel for Respondent concedes to this.

In the circumstances, the impugned order of the Tribunal and Order in Original are hereby set-aside and the matter is remanded to the concerned adjudicating authority before whom the respondents shall appear and place all material and documents which they had relied upon before the Tribunal; whereafter, the said authority shall pass appropriate order-in-original in accordance with law preferably within a period of 60 days from today.

The Reference Application is allowed in the above terms, whereas, Connected Petition bearing No. D- 3061 of 2022 filed by respondent stands disposed of in these terms.

Office to place copy of this order in the connected petition.

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